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June 12, 2020

VIA CM/ECF

The Honorable Maryellen Noreika
U.S. District Court for the
District of Delaware
J. Caleb Boggs Federal Building
844 North King Street
Wilmington, DE 19801

Re: Best Med. Int'l, Inc. v. Varian Med. Sys., Inc., et al., C.A. No. 18-1599-MN

Dear Judge Noreika:

Pursuant to D. Del. LR 7.1.2(b), Plaintiff Best Medical International, Inc. (“Best”) respectfully submits as supplemental authority two recent decisions from the Patent Trial and Appeal Board (“PTAB”) instituting *inter partes* review (“IPR”) of certain claims of U.S. Patent No. 6,393,096 (the “’096 patent”). The ’096 patent is one of the four asserted patents in this litigation.

These PTAB decisions are relevant to the disputed “computer” claim terms in both the ’096 patent and the asserted U.S. Patent No. 6,038,283 (the “’283 patent”). The parties have agreed that the terms of these two patents should be construed the same. (Joint Claim Construction Brief, D.I. 85, at page 20.) These PTAB decisions constitute intrinsic evidence for the upcoming June 26, 2020 claim construction hearing. *See Galderma Labs., L.P. v. Sun Pharm. Indus. Ltd.*, 411 F. Supp. 3d 271, 305 n.14 (D. Del. 2019).

In both decisions, the PTAB declined to construe the “computer” terms of the ’096 patent as means-plus-function limitations under 35 U.S.C. 112, ¶ 6, and instead determined that no claim terms in the ’096 patent required construction. (Ex. A at 10-11; Ex. B at 9-11.) Both PTAB decisions support Best’s arguments regarding the disputed “computer” terms in the ’096 and ’283 patents. (*See* D.I. 85 at 18-20 and 30-37.)

Should Your Honor have any questions or concerns regarding the foregoing, counsel are available at the Court’s convenience.

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Respectfully,

/s/ Anne Shea Gaza

Anne Shea Gaza (#4093)

cc: All counsel of record (via CM/ECF and E-Mail)

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